IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 510 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

JETHALAL NARANJI

Appearance:

PUBLIC PROSECUTOR for Petitioner

MR YS MANKAD for Respondent No. 1

MR GM JOSHI for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/10/98

ORAL JUDGEMENT

The respondents came to be acquitted by Chief Judicial Magistrate, Kutch at Bhuj on 27.2.91 for offence under Section 7 & 16 of the Prevention of Food Adulteration Act while deciding Summary Case No.358/1984.

2. The facts of the case in narrow compass are that Food Inspector Rasiklal Vanamalidas Dodia was working as such at Bhuj around July 1983. In that capacity he

visited Shri Harikrishna Trading Co. of Bhid area of Bhuj which was a grosser shop at about 10:30 a.m. He was accompanied by witness Veljibhai Soni. He went to the shop, introduced himself as such and took sample of asafoetida (Hing) weighing 600 gms, the said sample was divided in 3 parts and was sealed in presence of the Panch witness. The sample was then sent for analysis to the Public Analyst who in turn sent his report which is produced at record at Exh.53. On basis of that report necessary permission to prosecute was obtained under Section 20 of Prevention of Food Adulteration Act. (hereinafter referred to as the Act). After the permission was granted, the complaint was lodged. Side by side, a copy of the report of the Public Analyst was sent to the respondents as required under Section 13(2) of the said Act. At the Trial the accused denied the charges against him and after the trial, the learned Chief Judicial Magistrate came to a conclusion that the prosecution case suffered from infirmities like defective permission u/s 20 of the Act ultimately acquitted the accused persons. The said judgement and order is the subject matter of challenge in this appeal which is preferred by the State.

3. Heard Learned Additional Public Prosecutor Mr.K.C.Shah, on behalf of the appellant and learned advocate, Mr.Y.S.Mankad for the respondents. This Court is taken through the record and proceedings of the case. The main ground of attack by the appellant is that the learned Chief Judicial Magistrate has wrongly come to a conclusion that the permission which is granted is vague and therefore bad in the eye of law. In this regard, Mr.Shah submitted that in view of the decision of this High Court rendered by Division Bench in Harshvadan Dahyalal Sevak V. Nareshbhai Devandas Vadhwani, 1991(2) GLH 615, it could not have been said that sanction/permission which is granted in the instant case is without application of mind or is vague. Otherwise the prosecution has established the case against the accused and therefore the appeal may be allowed setting aside the impugned judgement and order. The respondents may be convicted and sentenced.

4. Mr.Mankad on the other hand, has supported the judgement of the learned Chief Judicial Magistrate on the ground that the verdict of the learned Chief Judicial Magistrate is supported may be for other reasons, factually by virtue of decision of this High Court in State of Gujarat V. Ramniklal Jesang Vora & Ors. (Criminal Appeal No.374 of 1987), on 30.5.1996, which is not reported and, therefore, the ultimate result of the

appeal should be dismissal.

5. Having gone through the entire evidence and the judgement in question it appears that in light of the decision of this High Court as reported in Harshvadan D Sevak V. Nareshbhai Devandas Vadhwani, 1991(2) GLH 615, the permission/sanction issued by the local health authority and produced on record at Exh.55 cannot be said to be suffering from any infirmity nor can it be said that it is issued in total non application of mind and therefore learned Chief Judicial Magistrate was in error in observing that this permission was not valid.

6. However, without making any specific observation as regards the procedure as to taking of sample and sealing, the prosecution case appears to be suffering from another major defect which must ultimately culminate into acquittal of the accused. That defect is in the report of the Public Analyst. If report of the Public Analyst produced on record at Exh.53 is perused. It appears that the sample was received by the Public Analyst on 22.7.1983. It was examined on 29.7.83 and the report was signed on 17.8.83. It also transpires that the sample was caused to be analysed by the Public Analyst and was not analysed by himself. It is also evident from the record that the Public analyst is not examined nor is the prson who analysed the same was examined. When a sample is not examined on the very day on which it is received, when the report is not prepared/signed on the very day the sample is examined and when the person who analysed the sample has not deposed before the Court the possibility of intermingling of the report of the sample cannot be ruled out and the benefit therefore must go to the accused. The same view is taken by this High Court in State of Gujarat V. Ramniklal Jesang Vora & Ors. (Criminal Appeal No.374 of 1987), decided on 30.5.1996.

7. In view of the above discussions, the judgement and order under challenge cannot be interfered with in an acquittal appeal by this court when ultmately the verdict arrived at by the Trial Court is found to be correct although based on different reasonings. The appeal therefore must fail and is therefore dismissed.

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